No. 81.

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In the Supreme Court of the United States.

By. W. Ayers for P. C.

OCTOBER TERM, 1900.

Filed Oct. 11, 1901.

No. ~~313.~~ 81.

THE MIDWAY COMPANY (SUBSTITUTED FOR THE GERMANIA IRON COMPANY),
Plaintiff in Error.

vs.

FRANK W. EATON, LEONIDAS MERRITT, MERRILL M. CLARK, RICHARD H. FAGAN AND MARGARETHA LONSTORF,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

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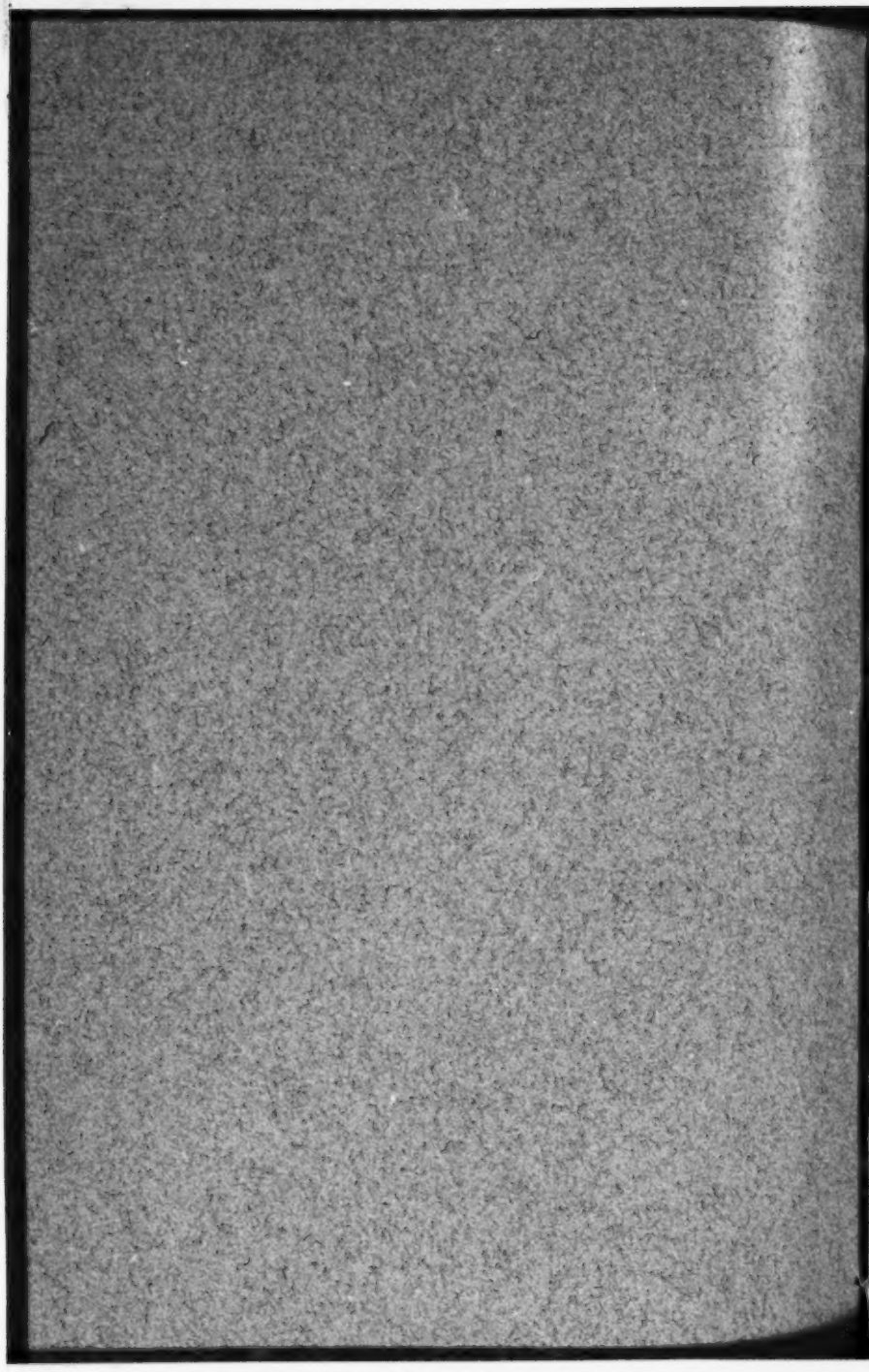

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BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The action terminating in the judgment upon which the writ of error issued in this case, was brought by the Germania Iron Company, the plaintiff in error, as plaintiff, against the defendants in error, as defendants, in the

District Court of St. Louis County, Minnesota, and was a statutory action to determine adverse claims to certain real estate, to-wit, the southeast quarter of the northwest quarter of Section thirty, in township sixty-three north of range eleven west of the Fourth Principal Meridian, according to the government survey in said St. Louis County, Minnesota.

Subsequently to the commencement of the action, the Midway Company was substituted as the plaintiff for the Germania Iron Company, by whom the land in question had been transferred to the said the Midway Company (Record page 91). The Midway Company claims title under a patent issued by the United States to Emil Hartmann, dated October 21st, 1895 (Record p. 169), by whom the land in controversy was conveyed to the Germania Iron Company (Record p. 335), by whom the same was conveyed to the Midway Company (Record p. 337).

The defendants claim title under a certain location of Sioux Half-Breed scrip issued under the Act of Congress of July 17th, 1854, (10 Statutes, 304) such location having been made by the said Frank W. Eaton, on June 16th, 1883, upon lands then unsurveyed, embracing those in controversy, the other defendants claiming under said Eaton. This location was cancelled in pursuance of a decision of the Hon. William F. Vilas, Secretary of the Interior, dated February 18th, 1889, (unpublished) a copy of which is annexed to and made a part of the Findings of the trial court (Record p. 95). The defendants Merritt, Fagan and Clark joined in an answer (Record p. 32). The defendant Lonstorf answered separately (Record p. 63) and the defendant Eaton stipulated that the answer of the defendants Clark, Merritt and Fagan should stand as his answer in said cause (Record p. 352).

The findings of fact *of the trial court* are found at page 95 of the Record and the judgment entered in pursuance thereof against the plaintiff in error and in favor of the defendants is found at page 345. From this judgment an appeal was taken to the Supreme Court of Minnesota, by whom the same was by its judgment rendered May 29th, 1899, in all things affirmed. On June 4th, 1899, a writ of error to the Supreme Court of the United States to review the judgment aforesaid, was allowed and issued.

The case at bar as originally brought was against not only the defendants in error, but against other defendants, whose rights were determined either by failure to appear and make any claim, or, in the case of Thomas W. Hyde, by the adverse decision of the lower court, this court having during the pendency of said action, rendered a decision decisive of Hyde's claim, (See Bishop Iron Company vs. Hyde, 177 U. S. 281,) and no appeal having been taken by Hyde from the decision of the trial court. The case at bar was tried and stands upon exactly the same record as was introduced in the Midway Company's vs. the defendants in error, being Number 312 upon the October Term, 1900, calendar of this court.

The questions presented then, are precisely the same as those presented in the Midway Company against Frank W. Eaton and others, the next preceding case upon the present calender, the land alone being other than that involved in the controversy in that case, but having been the subject of adjudication by the Land Department in and by the same decision of February 18th, 1889, referred to in the case of the Midway Company against Frank W. Eaton and others.

ASSIGNMENT OF ERRORS.

1. The court erred in holding that the Land Department of the United States had no authority to cancel the

locations of the Sioux Half-Breed scrip, issued under the Act of Congress, approved July 17th, 1854, and under which locations the defendants in error claim title.

2. The court erred in holding that the plaintiff in error holds the title derived under the patent issued by the United States, for the premises in controversy in said action, in trust for the defendants in error.

3. The court erred in holding that the defendants in error were and are the owners of the premises in controversy in said action.

4. The court erred in holding that the findings of fact of the court below justified its conclusions of law.

5. The court erred in holding that the title to the premises in controversy in this action, passed to Orillie Stram, nee Moreau, by virtue of the location of Sioux Half-Breed scrip, under which the defendants in error claim title.

6. The court erred in not holding that the findings of fact of the Secretary of the Interior, set forth and embodied in his decision of February 18th, 1889, were final and conclusive.

7. The court erred in not holding that the findings of fact of the Secretary of the Interior, set forth and embodied in his decision of February 18th, 1889, were sufficient to warrant and sustain the action of the Land Department of the United States in cancelling the Sioux Half-Breed scrip locations under which the defendants in error claim title.

8. The court erred in affirming the judgment of the court below.

9. The court erred in not reversing the judgment of of the court below and directing judgment for the plaintiff in error and against the defendants in error, as prayed in its complaint.

ARGUMENT.

In this case, it is only necessary to adopt the statement of facts and all other matters, set forth in our brief in the case of the Midway Company against Frank W. Eaton, Leonidas Merritt, Merrill M. Clark, Richard H. Fagan and Margaretha Lonstorf, next preceding the case at bar upon the October A. D. 1900, Term, calendar of this court.

For the reasons, and upon the authorities therein submitted, we respectfully submit that the judgment of the Supreme Court of Minnesota complained of, should be reversed, and judgment directed in favor of the plaintiff in error, and against the defendants in error as prayed for in its complaint.

WALTER AYERS,
Attorney for Plaintiff in Error.

P. H. SEYMOUR,
of Counsel.